UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/C.5/49/13
8 November 1994

ORIGINAL: ENGLISH

Forty-ninth session
FIFTH COMMITTEE
Agenda item 113 (d)

HUMAN RESOURCES MANAGEMENT: OTHER HUMAN RESOURCES QUESTIONS

Reform of the internal system of justice in the United Nations Secretariat

Report of the Secretary-General

I. INTRODUCTION

1. The present report outlines a number of concepts proposed for reforming the Organization's internal justice system, as requested by General Assembly resolution 47/226 of 30 April 1993. The proposals are made with a view to strengthening the internal justice system of the Organization in two main contexts: facilitating earlier resolution of disputes before they become formal appeals, on the one hand; and professionalizing the appeals and disciplinary machinery, on the other. The proposals draw on various elements of internal justice in other public services and international organizations and in this respect it is believed that they represent appropriate workable reforms for the United Nations. If approved by the General Assembly, a more detailed report, covering necessary changes in Staff Rules, financial implications and other implementation measures will be submitted to the General Assembly at its resumed forty-ninth session in early 1995. It is envisaged that the reforms will begin during the course of 1995; they will be closely monitored in the first two years of operation, and reviewed together with staff representatives in the Staff-Management Coordination Committee. Following this review, a report will be submitted to the General Assembly in 1998.

2. It should be noted at the outset that the great majority of grievances and disputes in the Organization are resolved informally through proper corrective administrative actions or early reconciliation process. A study commissioned by the International Civil Service Commission (ICSC) in 1988 pointed to the very high percentage (70-90 per cent) of grievances and claims settled at this initial informal stage in the various agencies of the United Nations system.

Yet, as will be noted below, this still leaves a large number of cases in the Organization reaching the formal litigation stages of the Joint Appeals Board (JAB) and the Joint Disciplinary Committee (JDC), which is one of the main concerns of the present report.

3. Essentially, there are two types of litigation in the system: grievances/appeals by staff members against administrative decisions or failure thereof; and disciplinary actions by the Organization against staff for misconduct by them. In both cases, the review in the Secretariat is undertaken by the Administrative Review Unit of the Office of Human Resources Management. This review stage has been impeded over recent years by the steady growth in the number of cases. Indeed, the volume of appeals to JAB has also grown sevenfold from 1970 to 1993. At the same time, in the disciplinary area, the Administrative Review Unit investigations of cases of possible misconduct rose and judgements at the United Nations Administrative Tribunal have also grown in the last 25 years. All in all, there has clearly been a material increase in the volume of cases in the Organization.

4. The envisaged reforms in the internal justice system comprise the following elements, which are discussed in detail below:

(a) Emphasis on early reconciliation and resolution;

(b) Establishment of ombudsman mediation panels at Headquarters and overseas offices of the Secretariat with the appointment of a full-time coordinator;

(c) Emphasis on impartiality of the administrative review function;

(d) Decrease in the number of steps relating to the administrative review;

(e) Transformation of JAB into an arbitration board;

(f) External recruitment of the arbitration board's chairperson;

(g) Option of binding arbitration available at the arbitration board, where both parties agree;

(h) Appointment of a legal officer to assist the Panel of Counsel;

(i) Transformation of JDC into a disciplinary board;

(j) Proposed change in title from "United Nations internal system of justice" to "Internal system for reconciliation at the United Nations Secretariat world wide".

II. EARLY RECONCILIATION AND RESOLUTION

5. Stronger emphasis will be put on early resolution of disputes through dialogue, positive communications, exchange of information and reconciliation of differences. That approach will be strongly encouraged by the Secretary-General

throughout the Organization as a matter of basic policy. New training programmes designed to improve communications and related skills will begin in 1995 and continue in following years; this training will contain dispute-resolution techniques. Staff representatives will be consulted in the design and contents of these training seminars.

III. OMBUDSMAN MEDIATION PANELS AT THE UNITED NATIONS

6. For the purpose of mediation, the Secretary-General recommends the establishment of ombudsman panels in the Secretariat, to be appointed jointly by existing staff/management machinery to deal with claims, grievances and discrimination issues raised informally by staff members. These ombudsman panels will be established at Headquarters and in Geneva, Vienna and Nairobi and at the regional commissions. They will absorb the activities of the current panels on discrimination and other grievances in these duty stations. The panels will be supported by a coordinator, appointed on a full-time basis in consultation with the staff. Stationed at Headquarters, the Coordinator will provide guidelines and training to panel members, drawing on models and experience of other United Nations bodies (International Monetary Fund (IMF), United Nations Development Programme (UNDP), etc.). The Coordinator will also monitor the work and results of the various panels world wide, make periodic comparative analyses, share the outcome with the panels/staff representative bodies and report annually to the Under-Secretary-General for Administration and Management.

7. The main purpose of the ombudsman panels will be to serve as mediators and as a second layer of dispute resolution when earlier reconciliation efforts have not succeeded. The panels' recommendations will not be binding, i.e., it would remain the Administration's responsibility to decide whether or not to implement a recommendation. The Coordinator, in his or her annual report to the Under-Secretary-General for Administration and Management, may make recommendations on the establishment of precedents.

IV. ADMINISTRATIVE REVIEW FUNCTION

8. To emphasize the importance and impartiality of the function of administrative review of grievances, requests by staff for administrative review of decisions or actions taken in their regard, now handled at the Administrative Review Unit of the Office of Human Resources Management, will be dealt with directly under the authority of the Under-Secretary-General for Administration and Management, with full-time administrative review officers having access to all department and office heads. The current investigation and litigation functions will remain in the Office of Human Resources Management. Review officers may refer cases to the ombudsman panels for reconciliation efforts at that level, if called for and if such attempts at mediation did not already take place.

V. DECREASE IN THE NUMBER OF STEPS RELATING TO THE REVIEW

9. With the above transfer of administrative review of grievances to the Under-Secretary-General for Administration and Management, a great number of delays, steps and exchanges of correspondence will be eliminated and administrative review operations will be integrated, streamlined and processed within the same office.

VI. ARBITRATION BOARD

10. The current growth and complexity of grievances has created a problem of availability of qualified staff to hear staff members' claims and appeals. It is recommended that JAB be transformed from its current composition of part-time volunteers into a full-time professional team, to be known as the arbitration board. This board will be headed by a chairperson to be externally recruited (see sect. VII below). The board will comprise, in addition to the chairperson, two members and two alternates, who will be appointed by the Secretary-General from a list of qualified staff members presented by staff and administration for full-time assignment to the board. The United Nations Children's Fund (UNICEF), UNDP and the United Nations Population Fund (UNFPA), which now use JAB and which will use the arbitration board, will be consulted in the appointment of board members.

11. The chairperson of the arbitration board will be stationed at Headquarters, as will the board itself. As necessary, local arbitration boards will be established in other duty stations, either on a continuous basis or for ad hoc cases outside New York for which, in the view of the chairperson, a review by a local board would be more appropriate. Given the current volume of cases, it is envisaged that a board would be established in Geneva to cover cases originating in Europe. The authority of the chairperson would include the prior review of the facts and evidence, and the authority to recommend and facilitate settlement procedures between the parties. Should such settlement efforts fail, or not be called for, the board will make its own formal recommendation on the case. They will be reviewed by the Secretary-General in accordance with current practice.

VII. EXTERNAL RECRUITMENT OF THE ARBITRATION BOARD CHAIRPERSON

12. As noted above, the chairperson of the arbitration board will be externally recruited. A joint staff-management selection panel will advise the Secretary-General on the best qualified candidate for this post.

VIII. OPTION OF BINDING ARBITRATION

13. It is proposed that the arbitration board be authorized to make binding decisions in specified cases for arbitration between the Administration and staff members. The proposed option of binding arbitration may raise a number of issues and further study of its impact will be completed prior to implementation. Should the Assembly endorse this proposal and binding arbitration is made available, it is estimated that the arbitration board would

yield a mix of non-binding recommendations and binding decisions; subsequently, this system could evolve into binding decisions on a greater number of issues.

IX. APPOINTMENT OF A LEGAL OFFICER FOR THE PANEL OF COUNSEL

14. The United Nations justice system being essentially internal, staff members who need counsel on their rights and obligations should be able for this purpose to have early access to a full-time qualified legal officer. It is envisaged to appoint such a legal officer to provide guidance to staff and assistance to volunteers of the Panel of Counsel representing staff members before the arbitration board and the Administrative Tribunal. It is recognized that legal support will be required for Geneva and in other duty stations.

X. DISCIPLINARY BOARD

15. In the disciplinary area, a full-time professional disciplinary board will be constituted to replace the current standing JDCs. It will be composed and operate along the same lines as the arbitration board, but with no conciliation or arbitration function. Rules of procedure for the disciplinary board will be issued after consultation with the staff and will reflect the need to ensure due process and expeditious disposition of cases. The chairperson of the board will authorize the creation of ad hoc panels in the field whenever warranted. For Europe, a permanent disciplinary board may be established in Geneva if warranted by the case-load.

XI. INTERNAL SYSTEM FOR RECONCILIATION AT THE UNITED NATIONS SECRETARIAT WORLD WIDE

16. To emphasize the new emphasis on reconciliation, documents and reports on the administration of justice will henceforth be entitled "Internal system for reconciliation at the United Nations Secretariat world wide".

XII. OBSERVATIONS

17. The above modifications will not affect the functions and the role of the United Nations Administrative Tribunal which will remain the final general appellate body for the arbitration board and the disciplinary board. It will also hear, but only by special leave, the appeals of the arbitration board's binding decisions. A report will be submitted to the General Assembly on the United Nations Administrative Tribunal statute and role when the new arbitration board and disciplinary board mechanisms have been properly tried out and evaluated for a period of at least two years.

18. The ombudsman panels will become fully operational in the second half of 1995. The arbitration board and the disciplinary board are scheduled to begin in January 1996. The pending JAB/JDC cases introduced before 31 December 1995 will be completed by the JAB/JDC panels constituted before that date, as expeditiously as possible.